

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

LEE N. KOEHLER,

Plaintiff,

V.

A. DAVID DODWELL,

Defendant.

Civil Action  
No. 1:04-mc-10105

## **PLAINTIFF'S MOTION FOR CHARGING ORDER**

Through this motion, the plaintiff Lee N. Koehler is seeking a charging order against the defendant A. David Dodwell's interest in a Massachusetts-based limited liability company to satisfy Koehler's \$2,897,837.07 judgment against Dodwell. Koehler seeks this charging order by virtue of a provision in the Massachusetts Limited Liability Company Act (M.G.L. c. 156C, § 40) that permits this Court to reach a judgment debtor's interest in a limited liability company to pay for the unsatisfied amount of a judgment, plus interest.

## FACTUAL BACKGROUND

On June 4, 1993, the United States District Court, District of Maryland, entered judgment for Koehler and against Dodwell in the amount of \$2,096,343.00. Dodwell has not paid Koehler on the judgment. The amount that Dodwell currently owes, including interest and costs, is \$2,897,837.07. A spreadsheet reflecting interest and cost calculations for the judgment is attached as Exhibit A. Koehler registered the judgment in this Court on April 12, 2004.

According to the Secretary of the Commonwealth of Massachusetts, Dodwell is a member of a domestic limited liability company named Island Resort Collection LLC. (A report on Island Resort Collection LLC from the Secretary of the Commonwealth's office is attached as

Exhibit B.) This is the membership interest that Koehler seeks to reach through this motion to satisfy some, if not all, of his judgment.

**ARGUMENT**

Pursuant to M.G.L. c. 156C, § 40: “On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest.” So-called “charging orders” under this state statute are available in federal court pursuant to Federal. R. Civ. P. 69, which provides that actions to enforce a judgment are “in accordance with the practice and procedure of the state in which the district court is held.” Given that Dodwell is a member of a limited liability corporation and that Koehler is a judgment creditor of Dodwell, Koehler is entitled to a charging order under M.G.L. c. 156C, § 40. Accordingly, Koehler respectfully requests that this Court enter an order in the form attached hereto as Exhibit C.

WHEREFORE, Lee N. Koehler respectfully requests that his Motion be granted and that this court issue a charging order against A. David Dodwell’s interest in Island Resort Collection LLC in substantially the form attached hereto as Exhibit C.

Respectfully submitted,

LEE N. KOHLER,

By his attorneys,

/s/ STEPHEN D. RIDEN  
Russell Beck, BBO No. 561031  
Stephen D. Riden, BBO No. 644451  
EPSTEIN BECKER & GREEN, P.C.  
111 Huntington Avenue, 26<sup>th</sup> Floor  
Boston, Massachusetts 02199  
(617) 342-4000

Dated: April 20, 2004

# Exhibit A

## JUDGMENT OWED TO LEE KOEHLER FROM A. DAVID DODWELL

FACE AMOUNT OF JUDGMENT:	\$2,096,343.00
DATE JUDGMENT ISSUED:	04-Jun-1993
INTEREST RATE ON JUDGMENT:	3.54%

<u>BEGINNING DATE</u>	<u>ENDING DATE</u>	<u>JUDGMENT BALANCE</u>	<u>INTEREST</u>	<u>OUTSTANDING BALANCE</u>
04-Jun-1993	31-Dec-1993	\$2,096,343.00	\$42,899.79	\$2,139,242.79
01-Jan-1994	27-Oct-1994	\$2,096,343.00	\$60,994.97	\$2,200,237.76
27-Oct-1994	27-Oct-1994	\$2,096,343.00	(\$3,992.98)	\$2,196,244.78
28-Oct-1994	31-Dec-1994	\$2,096,343.00	\$13,215.58	\$2,209,460.36
01-Jan-1995	31-Dec-1995	\$2,096,343.00	\$74,210.54	\$2,283,670.90
01-Jan-1996	31-Dec-1996	\$2,096,343.00	\$74,413.86	\$2,358,084.76
01-Jan-1997	31-Dec-1997	\$2,096,343.00	\$74,210.54	\$2,432,295.30
01-Jan-1998	31-Dec-1998	\$2,096,343.00	\$74,210.54	\$2,506,505.84
01-Jan-1999	31-Dec-1999	\$2,096,343.00	\$74,210.54	\$2,580,716.38
01-Jan-2000	31-Dec-2000	\$2,096,343.00	\$74,413.86	\$2,655,130.24
01-Jan-2001	31-Dec-2001	\$2,096,343.00	\$74,210.54	\$2,729,340.78
01-Jan-2002	31-Dec-2002	\$2,096,343.00	\$74,210.54	\$2,803,551.32
01-Jan-2003	31-Dec-2003	\$2,096,343.00	\$74,210.54	\$2,877,761.86
01-Jan-2004	31-Mar-2004	\$2,096,343.00	\$18,501.81	\$2,896,263.67

Amount shown with date of 27-Oct-1994 represents agreed credit to judgment arising from Jenkins & Gibson settlement agreement.

<b>Balance due on Judgment</b>	<b>\$2,896,263.67</b>
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Plus Outstanding Costs per Bill of Costs issued by Court of Appeals for Fourth Circuit on August 26, 1998	<b>\$984.68</b>
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Plus Outstanding Costs per Bill of Costs issued by Court of Appeals for Fourth Circuit on June 28, 1998	<b>\$588.72</b>
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Total Due on Judgment as of March 31, 2004	<b>\$2,897,837.07</b>
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# Exhibit B



**The Commonwealth of Massachusetts**  
**William Francis Galvin**

Secretary of the Commonwealth  
 One Ashburton Place, Boston, Massachusetts 02108-1512  
 Telephone: (617) 727-9640

**ISLAND RESORT COLLECTION LLC Summary Screen**



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**The exact name of the Domestic Limited Liability Company (LLC):** ISLAND RESORT COLLECTION LLC

**Entity Type:** Domestic Limited Liability Company (LLC)

**Identification Number:** 000833733

**Date of Organization in Massachusetts:** 01/16/2003

**The location of its principal office:**

No. and Street: 15 CHURCH ST  
 City or Town: VINEYARD HAVEN State: MA Zip: 02568 Country: USA

**If the business entity is organized wholly to do business outside Massachusetts, the location of that office:**

No. and Street:  
 City or Town: State: Zip: Country:

**The name and address of the Resident Agent:**

Name: RUSSELL URBAN  
 No. and Street: 15 CHURCH ST  
 City or Town: VINEYARD HAVEN State: MA Zip: 02568 Country: USA

**The name and business address of each manager:**

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
Prior to August 27, 2001, Records can be obtained on Microfilm		

**The name and business address of the person in addition to the manager, who is authorized to execute documents to be filed with the Corporations Division.**

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
SOC SIGNATORY	A DAVID DODWELL	56 SOUTHSORE RD

SOC SIGNATORY	THOMAS CHILDERS	SOUTHAMPTON, FF SN02 BMU 1980 KILARNEY DR., SE BELLEVUE, WA 98004 USA
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**The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property**

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	A. DAVID DODWELL	56 SOUTHSORE RD. SOUTHAMPTON, FF SN02 BMU
REAL PROPERTY	THOMAS CHILDERS	1980 KILARNEY DR., SE BELLEVUE, WA 98004 USA

☐ Consent      ☐ Manufacturer      ☐ Confidential Data      ☐ Does Not Require Annual Report  
☐ Partnership      ☐ Resident Agent      ☐ For Profit      ☐ Merger Allowed

**Select a type of filing from below to view this business entity filings:**

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 Certificate of Cancellation  
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# Exhibit C



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

LEE N. KOEHLER,

Plaintiff.

 $\mathbf{V}_s$ 

A. DAVID DODWELL,

Defendant.

Civil Action  
No. 1:04-mc-10105

## PROPOSED CHARGING ORDER

Upon consideration of plaintiff Lee N. Koehler's Motion For Charging Order, it is hereby

ORDERED that:

1. The interest of defendant A. David Dodwell, as a member of Island Resort Collection LLC, be and is subjected to an encumbrance and charging order in favor, and for the benefit, of the plaintiff Koehler.
2. On or before May 15, 2004, Dodwell shall file with the clerk of this Court a sworn answer reporting to the Court all amounts distributable or payable to Dodwell at the time of service of this order and at all subsequent times attributable to any interest owned in Island Resort Collection LLC; and in such sworn answer and report Dodwell shall state the value, at the time of service of this order and at all subsequent times, of both the capital and income accounts attributable to the interest of Dodwell in Island Resort Collection LLC.
3. Island Resort Collection LLC shall not distribute to Dodwell any funds or assets whatsoever by virtue of Dodwell's interest as a member in or owner of an interest in Island Resort Collection LLC, but instead shall pay over to Lee N. Koehler all funds and assets whatsoever which, by virtue of defendant's interest as a member in or owner of an interest in

Island Resort Collection LLC would have been distributed to Dodwell in the normal course of business of Island Resort Collection LLC.

So Ordered on this \_\_ day of April 2004.

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\_\_\_\_\_, J.